IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4404 OF 2002
WITH
WRIT PETITION NO.2251 OF 2003

W.P. 4404/02 :

Mr. S.B. Desai. ...Petitioner.
Vs.
The Administrator, Union Territory of
Daman and Diu, Dadra and Nagar
Haveli & Ors. ...Respondents.
....
Mr. B.D. Joshi with Ms.Pushpa Diwan for the Petitioner.
Mr. D.A. Dubey for Respondent No.1.
Mr. A. S. Rao for Respondent No.4.
.....

W.P. 2251/03 :

Smt. Bharatiben Solanki. ... Petitioner.
Vs.
Mr. S.B. Desai & Ors. ... Respondents.
.....
Mr. A. S. Rao for the Petitioner.
Mr.B. D. Joshi for Respondent No.1.
Mr. D.A. Dubey for Respondent No.5.
.....

CORAM : F.I. REBELLO, J. AND
DR.D.Y.CHANDRACHUD, J.

January 17, 2006.

ORAL JUDGMENT (PER DR. D.Y. CHANDRACHUD, J.):

In both these petitions under Article 226 of the Constitution, the Petitioners have called into question the correctness of an order passed by the Central Administrative Tribunal at Mumbai on 27th February 2002. For convenience of reference, it would be appropriate to advert to the parties as they appear in Writ Petition 4404 of 2002. The Petitioner before the Court in that petition is the First Respondent in companion Writ Petition 2251 of 2003 while the Fourth Respondent therein, is the Petitioner in the companion petition.

2. The Petitioner before the Court, S. B. Desai holds B.Ed. And M.Com. Degree qualifications, having received those degrees respectively in the years 1995 and 1997. The Second and Third Respondents are the Collector and Secretary (Education), and the Deputy Secretary (Education) in the Union Territory of Dadra and Nagar Haveli at Silvassa. A requisition was sent to the Employment Exchange, Silvassa seeking names of eligible candidates for employment as Post Graduate Teachers in the Higher Secondary School conducted by the administration of the Union Territory at Naroli. The Petitioner came to be appointed by

an order dated 2nd December 1998 issued by the Assistant Director of Education as a Post Graduate Teacher for a period of 89 days on daily wages. Conditions 1, 2 and 4 of the letter of appointment were as follows :

> "1. Their appointment shall be for a period of 89 days from the date of issue order, or till the posts are filled in by regular appointment, whichever is earlier.
>
> -2. On completion of 89 days period, their appointment shall stand terminated without any notice.
>
> -4. They shall have no right for regular appointment on the post in future."

The appointment was for the period between 9th December 1998 and 7th March 1999. The Petitioner came to be appointed for a period of 53 days, again on daily wages between 9th March 1999 and 30th April 1999. Fresh appointments were issued to the Petitioner (i) For the period between 29th December 1999 until 26th March 2000; (ii) On 20th June 2000 for the period between 29th March 2000 and 6th August 2000; (iii) On 8th March 2001, for a period of 89 days between 9th August 2000 and 26th November 2000; and between 29th November 2000 till 13th February 2001.

Thus, it would appear that there were 8 orders of appointment, appointing the Petitioner on a daily wage basis, each time with technical break.

3. The submission of the Petitioner is that his initial appointment was after following the requisite procedure prescribed by the Recruitment Rules and that he ought to have been appointed on a regular basis as soon as a vacant post was available. However, the authorities decided to hold fresh interviews for selecting teachers and an advertisement was issued on 2nd June 2000 inviting applications and prescribing the qualifications that were required. The qualifications that were prescribed were as follows :

> "1) First Class M.A./M.Sc/M.Com or equivalent post Graduate Degree from recognised University and Degree in Teaching education.
>
> OR
>
> -2) Second Class M.A./M.Sc./M.Com or equivalent post graduate Degree with M. Ed. Degree with 3 years teaching experience in HSS or B.Ed. Degree with 5 years teaching experience in High School."

Note 4 to the advertisement specifies that the condition of teaching experience was relaxable in the case of candidates with a Second Class at the M.A., M.Sc. or, as the case may be, M.Com. examination in case a candidate was otherwise found suitable. Both the Petitioners before the Court in the two Petitions applied in pursuance of the advertisement and it was the Petitioner in the companion Writ Petition (Writ Petition 2251 of 2003) who came to be selected.

4. The grievance of the Petitioner before the Court in Writ Petition 4404 of 2002 is that when he was initially appointed in the year 1998 on a daily wage basis, he had been found to be suitable for recruitment by the Selection Committee and that he satisfied all the conditions required for the post of a post graduate teacher in the Commerce faculty. The Petitioner worked for diverse periods between 9th December 1998 till 13th February 2001 after selection though with artificial breaks and it was his case that his services ought to be regularised. The Petitioner moved the Central Administrative Tribunal in Original Application No.551 of 2000 seeking a direction inter alia to the authorities to consider his case

for appointment as a post graduate teacher on a regular basis and seeking to quash and set aside the appointment of an outsider (the Fourth Respondent) as a post graduate teacher.

5. The Assistant Director of Education filed a Written Statement on behalf of the authorities, opposing the application filed by the Petitioner. It was inter alia submitted that the last of the orders of appointment issued to the Petitioner on a short term basis, pending regular selection, expired on 7th August 2000 and the process of regular selection for the solitary post of a post graduate teacher in the Commerce faculty was initiated by issuing an advertisement on 2nd June 2000. The Departmental Selection Committee held interviews at which 56 candidates including the Petitioner appeared and the Petitioner having failed to get selected, was not, it was submitted, entitled to make any grievance. It was submitted that the earlier appointments were purely on a temporary basis pending regular selection in accordance with the Recruitment Rules. Hence, it was urged that the Petitioner was not entitled to selection or regularisation. The authorities stated that the Fourth Respondent had been selected on a regular basis by the Departmental Selection Committee; that she possessed

M.Com and B.Ed. qualifications with a teaching experience of more than 8 years. In the rejoinder that was filed by the Petitioner, it was inter alia submitted that the Fourth Respondent had no experience of teaching in a Higher Secondary School or a Secondary School and that her only experience was as a teacher in a primary school. In so far as the qualifications of the Fourth Respondent are concerned, it was submitted that the Fourth Respondent holds an M.Com. Degree in the Second Class and a B.Ed. qualification and that since she did not have any experience at all of teaching in a High School, she did not fulfill the condition of eligibility.

6. The Central Administrative Tribunal by its judgment dated 27th February 2002 came to the conclusion that the Petitioner was appointed purely on a temporary basis as a daily wager for period of 89 days at a time. Though the initial order of appointment was extended from time to time, the Petitioner had not challenged his appointment and in fact participated in the regular process of selection during the course of which he had not been found to be suitable. In the circumstances, the Tribunal did not find any substance in the claim of the Petitioner. In so far as the appointment of the Fourth Respondent was concerned, the

Tribunal held that there were procedural flaws in the selection and that the Recruitment Rules had not been duly complied with. In the circumstances, the Tribunal quashed and set aside the selection of the Fourth Respondent as a post graduate teacher in pursuance of the selection held on 27th June 2000 and directed that a fresh selection shall be conducted in accordance with the Recruitment Rules within a period of three months. It is an admitted position before us that in pursuance of the selection process that took place upon the direction of the Tribunal, a fresh candidate came to be selected. Neither of the Petitioners has impleaded the new candidate. However, the fresh selections have been made subject to the orders that may be passed in the petition filed by the Fourth Respondent challenging the order of the Tribunal.

7. While considering the merits of the submissions which have been urged on behalf of the contesting parties in the two petitions before the Court, it would be at the outset, material to advert to the Recruitment Rules notified on 28th December 1995. These Rules are called 'The Dadra and Nagar Haveli Administration, Education Department, Post Graduate Teachers, Group “C” Non-Ministerial, Non-Gazetted Posts Recruitment Rules,

1995'. The post of a Post Graduate Teacher in a Higher Secondary School is classified as a Group-C post and it is designated as a selection post. The schedule to the Rules prescribes the following conditions of eligibility for recruitment to the post :

> “1. First Class M.A./M.Sc./M.Com or equivalent Post Graduate Degree from recognised University, and Degree in Teaching Education.
>
> OR
>
> -2. Second Class M.A./M.Sc./M.Com or equivalent post graduate Degree with M.Ed. Degree with 3 years teaching experience in HSS or B.Ed. Degree with 5 years teaching experience in High School.”

Note (iii) appended to the relevant Rules is thus : “In case of Second Class M.A./M.Sc./M.Com. condition of teaching experience is relaxable in case candidate otherwise found suitable”.

8. Now in the present case, the facts as they emerge during the course of the hearing of these petitions, show that neither the Petitioner nor, for that matter, the Fourth Respondent fulfills the

conditions of eligibility prescribed by the Recruitment Rules. The Petitioner has stated before the Court that he passed his M.Com examination with 57% marks, that is to say, in the Second Class and that he holds a B.Ed. Degree. The Rules stipulate that a person who has passed his Post Graduation in the Second Class must either hold an M.Ed. Degree with three years' teaching experience in a Higher Secondary School or a B.Ed. Degree with five years' teaching experience in a High School. The Petitioner did not possess the requisite experience of five years in a High School on the date of the original selection in 1998 or when the fresh selections came to be held. Admittedly, the condition of experience has not been relaxed. The Tribunal has noted that the files of the Government which were produced before it, showed that after the report of the Departmental Selection Committee a conscious decision was taken in 1998 to hold fresh interviews for the recruitment of teachers in the subjects of Commerce and Economics. In the meantime, temporary appointments for a period of 89 days were to be issued so that the course of studies of the students was not affected. The Petitioner was conscious of the nature of his appointment and accepted an appointment initially for a period of 89 days and which was thereafter renewed from time to

time. The last appointment of the Petitioner expired on 7th August 2000 and he participated in the selection process which was conducted thereafter. In the circumstances, it is not possible to accept the submission of the Petitioner that he is entitled to relief since (i) The Petitioner failed to meet the requirement of eligibility prescribed in the Recruitment Rules; (ii) He was aware that the appointment which was being offered to him was of a temporary nature; and (iii) Eventually upon the expiry of the last period of engagement he participated in the selection process in which he was not found to be suitable.

9. In so far as the Fourth Respondent is concerned, who is also the Petitioner before the Court in companion petition 2251 of 2003, her case stands on an even weaker foundation. The Fourth Respondent ex-facie did not meet the conditions of eligibility. It has not been disputed before us that the Fourth Respondent has passed the M.Com. Examination in the Second Class and that she holds a B.Ed. Qualification. In order to meet the requirements of eligibility, the Fourth Respondent had to have five years' teaching experience in a High School. Admittedly, the Fourth Respondent had no teaching experience in a High School since she was a

primary school teacher. Undoubtedly, the Recruitment Rules do contemplate that the condition of teaching experience can be relaxed where a candidate who has passed his or her Post Graduation in the Second Class is otherwise found to be suitable. However, in the present case, the power of relaxation was not exercised and, therefore, neither the Petitioner nor the Fourth Respondent can be exempted from the requirement of meeting the experience prescribed in the Recruitment Rules. The Tribunal has set aside the appointment of the Fourth Respondent in pursuance of the selection which was held on 27th June 2000 noting that the selection process had not been conducted in accordance with the Recruitment Rules. In this regard, it must be noted that the attention of the Tribunal was drawn to the O.M. Dated 7th June 1999 under which a selection to Group “B”, “C” or “D” posts, both technical and non-technical, was required to be carried out on the basis of a written test and an interview. Admittedly, no written test was held when the Fourth Respondent was selected on 27th June 2000. That apart, as we have already noted, the Fourth Respondent did not meet the conditions of eligibility.

10. For all these reasons we are of the considered view that

there is no merit in either of the two petitions. Neither of the two Petitioners fulfills the conditions of eligibility prescribed by the Recruitment Rules. In addition, the original appointment of the Petitioner in Writ Petition 4404 of 2002 was a temporary appointment pending a fresh selection in accordance with the Recruitment Rules. The Petitioner accepted that appointment and participated in the subsequent selection at which he was not found to be suitable. In so far as the Petitioner in Writ Petition 2251 of 2003 is concerned, it is evident that she did not have any experience at all of teaching Higher Secondary or High School students. The requirement of experience was not relaxed. Neither of the two petitioners was, therefore, entitled to a valid order of appointment in their favour. The regular selection has already been carried out. In the circumstances, we do not find any merit in the petitions. The petitions shall stand dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)